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News Release

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Owner of nursing professionals company indicted for failure to pay employment taxes

It is the responsibility of business owners to collect, account for and pay over employment taxes on its employees, but a 59-year-old Livingston, Mont., man allegedly failed to do so and was recently indicted in federal court.

Francis Leroy McLain was charged Jan. 8 with nine counts of failure to account for and pay over employment taxes. McLain was arrested Jan. 30 in Montana and appeared in court today in Minneapolis.

McLain's indictment alleges that he willfully failed to account for and pay over to the Internal Revenue Service federal income taxes on the wages of employees of Kirpal Nurses and those employees' share of Federal Insurance Contribution Act taxes. The federal income taxes not accounted for or paid over total \$344,930.49 from Dec. 31, 2002 through Dec. 31, 2004, and the employees' share of FICA taxes not accounted for or paid over total \$248,454.94 for the same time period.

From 2001 through 2004, McLain owned and operated Kirpal Nurses, also known as Kind Hearts, a company that supplied nurses and other nursing professionals to nursing homes and other health care facilities on a temporary basis. The company was based in Minneapolis.

Prior to starting Kirpal Nurses, McLain owned and operated several other temporary nursing services beginning in 1987, including Lifelines Care, Inc., Lifelines Cooperative Care, Inc., and Cooperative Nurses, Inc. The indictment alleges that from 1987 through 1991, McLain failed to account for and pay over employment taxes on the wages of employees at these two businesses despite communications from the IRS demanding that he pay such taxes.

In 1995, McLain brought several civil lawsuits against the United States claiming that the nursing professionals who worked for him were independent contractors rather than employees and that therefore, there was no requirement to pay employment taxes. The U.S. disagreed and countersued McLain. The civil lawsuits were settled in 1998, and, as part of that settlement,

McLain agreed to withhold and pay over employment taxes for the nursing professionals who worked for any of his businesses, the indictment stated.

The indictment alleges that McLain took steps to hide his ownership and involvement in Kirpal Nurses by using others as the owners and operators, including his daughter. From June 1999 through December 2001, McLain arranged to pay the IRS some but not all of the employment taxes.

In May 2002, Kirpal Nurses was sent a notice from the Minnesota Department of Health advising of a change in state law requiring all nursing professionals to be treated as employees and not as independent contractors. In December 2002, McLain provided the department with registration forms, which identified a financial institution in which employment tax withholdings were purportedly deposited. The indictment also alleges that McLain asserted that employment taxes were being withheld for all Kirpal employees, including nursing professionals.

Later that month, the health department determined that Kirpal Nurses was in violation of Minnesota law because it failed to provide evidence of employment tax withholdings and failed to document that all staff were treated as employees.

In December 2002, Kirpal Nurses provided the IRS with a single payment of approximately \$4,200 in employment taxes for the calendar quarter ending on Dec. 31, 2002. According to the indictment, Kirpal failed to make any employment tax payments to the IRS after that.

The indictment alleges that from January 2003 through January 2005, Kirpal Nurses did issue W-2 forms to some of its employees, but failed to file any of them with the IRS. It also alleges that McLain failed to file Forms 941 as well.

If convicted, McLain faces a potential maximum penalty of five years in prison and a \$250,000 fine. All sentences are determined by a federal district court judge. This case is the result of an investigation by the IRS-Criminal Investigation Division, and is being prosecuted by Assistant U.S. Attorney Nicole A. Engisch.

An indictment is a determination by a grand jury that there is probable cause to believe that offenses have been committed by the defendant. The defendant, of course, is presumed innocent until he or she pleads guilty or is proven guilty at trial.